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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,485	01/23/2004	Eric J. Ruff	2916-5950US ()	7029
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EXAMINER				
CHEN, PAUL T				
ART UNIT		PAPER NUMBER		
3652				
NOTIFICATION DATE		DELIVERY MODE		
08/11/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/763,485

Applicant(s)

RUFF ET AL.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-10, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 20, 2008, has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,4,5,8,9,18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mark (6,238,120) (see PTO-892) in view of Kremer et al. (4,685,820) or Bob et al. (6,637,967).

Mark (6,238,120) discloses a tool comprising a body (23) having a chamber, a grasping element, a liquid adhesive (24) (Col. 1, lines 8-15), having an end of the body and an end for adhesion, a tip (15,17,20) (see Fig. 5) movable within the chamber, a plunger (37) (Fig. 7), and an interior fixed element (figs. 7 and 8) to limit the tip movement, but does not clearly show the grasping element having a semisolid material. However, Kremer et al. (4,685,820) teaches a semi-solid material such as glue, gel, or others provided (last paragraph of col. 9) on the applicator (14). Bob et al. (6,637,967) also teaches a semi-solid material on the applicator (1st paragraph of col. 11). Accordingly, it

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would have been obvious to those skilled in the art to provide a semi-solid material on the Mark (6,238,120) as taught by Kremer et al. (4,685,820) or Bob et al. (6,637,967) to smooth apply.

Re claim 4, figures 7 and 8 of Mark (6,238,120) show a tip secured in the body and tube wherein the tip could be differently positioned biased by a spring (13).

Re claim 5, figures 7 and 8 of Mark (6,238,120) show a tip-engagement element body and a body-engagement element includes a thread.

Re claim 9, figures 7 and 8 of Mark (6,238,120) of show an interior fixed element to limit the tip.

4. Claims 6,7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mark (6,238,120) and Kremer et al. (4,685,820) or Bob et al. (6,637,967), as applied to claims 1-4, and further in view of Otake (5,388,726) (see PTO-892).

The modified Mark (6,238,120), as presented above, does not show a cap to cover.

However, Otake (5,388,726) teaches a cap (3) to cover the tip. Accordingly, it would have been obvious to those skilled in the art to provide a cap on the lower end of Mark (6,238,120) as taught by Otake (5,388,726) to secure the tip from damaging.

5. Claims 1, 2, 4-10, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seymour et al. (6,293,431) in view of Kremer et al. (4,685,820) or Bob et al. (6,637,967).

Seymour et al. (6,293,431) discloses a tool comprising a body (Figs. 2A-2C) having a chamber, a grasping element, a sealing compound, having an end of the body and an end for adhesion, a tip (Figs. 1A-1C and 4) movable within the chamber, a plunger (5), and an interior fixed element (figs. 1 and 2) to limit the tip movement, but does not

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clearly show the grasping element having a semisolid material. However, Kremer et al. (4,685,820) teaches a semi-solid material such as glue, gel, or others provided (last paragraph of col. 9) on the applicator (14). Bob et al. (6,637,967) also teaches a semi-solid material on the applicator (1st paragraph of col. 11). Accordingly, it would have been obvious to those skilled in the art to provide a semi-solid material on the Mark (6,238,120) as taught by Seymour et al. (6,293,431) as taught by Kremer et al. (4,685,820) or Bob et al. (6,637,967) to smooth apply.

Re claim 4, figures 1 and 2 of Seymour et al. (6,293,431) show a tip secured in the body and tube wherein the tip could be differently positioned biased by a spring (13).

Re claim 5, figures 7 and 8 of Seymour et al. (6,293,431) show a tip-engagement element body and a body-engagement element includes a thread.

Re claims 6,7, and 10, figures 1A-1C of Seymour et al. (6,293,431) show a cap.

Re claim 9, figures 1A-1C of s Seymour et al. (6,293,431) show an interior fixed element to limit the tip.

Response to Arguments

6. Applicant's arguments with respect to claims 1,2,4-10,18, and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571)272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL T. CHIN/

Primary Examiner, Art Unit 3652